IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 162 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALIT R AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 162 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

MR SUDHANSHU PATEL, APP for Respondent No. 1

MR AD SHAH for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/03/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Dagli for the petitioner, ld. APP Mr. Sudhanshu Patel for Respondent No.1 State of Gujarat and ld. counsel Mr. A.D.Shah for the original

complainant.

2. The petitioner- original accused of Criminal Case No. 11517/1997 pending in the court of ld. Judicial Magistrate (F.C.), Porbandar for the offence punishable under Section 630 of the Companies Act, has moved this Criminal Revision Application under Section 397 of CrPC. Initially, only State of Gujarat was made party respondent, but thereafter, in the month of April,2001, original complainant Mr. Shyam Prashad Chanda (Mr. S.P.Chanda) - officer of the complainant company is joined as party- Respondent No.2. Ld. counsel Mr. A.D. Shah appears for Respondent No.2- original complainant.

3. I have carefully considered the nature of prosecution and underlying dispute between the main parties. The petitioner is being prosecuted as he has wrongly retained the quarter viz. residential accommodation allotted to him while he was in the service of the company i.e. Jagdish Oil Industries Ltd., Porbandar. It is clarified that at present, under the scheme, said company is taken over with all its activities, by the another company. The petitioner is resisting the prosecution by carving out mainly two, alternate defences. Firstly, he submits that the case of the petitioner is that he has never voluntarily resigned from the services of the company. His resignation was obtained forcibly against his wish and will and, therefore, he cannot be said to be terminated or relieved from the employment of the company and, obviously therefore, he is entitled to continue the possession of the residential accommodation allotted to him in the capacity of General Manager. Second, alternative, defence is that the company, when he was in service, was recovering regular rent of Rs. 200/ per month from him and the said amount was directly deducted by the company from the salary and, therefore, there is relationship of landlord and tenant between the company and the petitioner.

4. The prosecution has led evidence. Statement of the accused under Section 313 of CrPC is also recorded. While replying to the incriminating evidence recorded by the trial Court against the petitioner accused, the accused has stated that he would like to examine witnesses from his side i.e. defence witnesses and in support of his submission, he had filed one application exh.93 which is produced at page-1 with this revision application, wherein he has named Mr. N.H. Pai, Director or any other competent, conversant person who can produce the relevant document and explain the entries

in the Accounts of the Company for the period from 1991-92 to 1994-95 in special reference to the income of the company under the head of "rent" received. The other witness shown in the said application is one Mr. A.R. Joshi, R/o Porbandar serving in the company. This witness Mr. A.R.Joshi has been examined. After examination of Mr. Joshi, the petitioner applied for issuance of summons to Mr. Pai, Director of the Company having his office at Fort, Bombay vide application exh.100. When this application exh.100 was placed before the trial Court, on that day, application exh.99 which was moved by the ld. counsel appearing for the company was also placed before the trial Court wherein it was stated that the petitioner accused is trying to summon Mr. Pai only with a view to bring pressure on the company and also to delay the proceedings. Other contentions were also raised. One legal and technical contention raised by the company is that in view of the cross-examination of original complainant who had stepped into the witness box on the strength of the authority letter issued by the company and the order passed by the trial Court below exh.76 when this witness (i.e. complainant) was requested to be recalled by the accused under Section 311 of CrPC, the request to examine any other witness should not be accepted. The impugned order is consolidated and is passed below applications exh.99 & 100.

5. After careful consideration of the details of the statement of the accused recorded under Section 313 of CrPC, contents which are brought before the Court from the deposition of witness Mr. A.R.Joshi and cross-examination of the complainant and the order passed by the Court below application exh.76, this Court is of the view that there is no merits in this petition. This Court has to state with some details as to how the present revision application is meritless. Putting list of events in reference to the nature of the complaint pending in the court of ld. Judicial Magistrate (F.C.), Porbandar, it is submitted that exercise of revisional powers would amount to appreciation of evidence yet to be evaluated on merits by the ld. trial Judge who really has to do said exercise. Even otherwise, this court exercising revisional jurisdiction has a limited jurisdiction in doing such venture. The documents which the petitioner intend to bring on record which he could have brought very well on record through the deposition of the complainant when his deposition was recorded by the trial Court. His evidence has been recorded on three different dates. Certain questions are also put to this witness in this regard. So, there is no force in the

arguments of ld. counsel Mr. Dagli that rejection of application exh.100 would result into serious prejudice to the defence.

6. Looking to the contents of the application filed by the petitioner and the complainant viz. exh.99 & 100 and the order passed thereunder, it can be said without any hesitation that the order is interlocutory. It would not be correct or otherwise legal to say that the order passed by the ld. trial Judge has any element of finality and there is no scope for the present petitioner to agitate the grievance at any stage before the higher forum. In view of the ratio of the decision of the Apex Court in the case of K.K. Patel & Another v/s State of Gujarat & Another, reported in 2001 SCC (Cri.) 200, as submitted by ld. counsel Mr. A.D.Shah for the original complainant, this application can be dismissed solely on the ground of the impugned order being interlocutory one, since the order being interlocutory, revision would not be maintainable. Even if it is accepted for the sake of arguments that the impugned order is not an interlocutory order, even then, there is no patent illegality or procedure wrong committed by the trial Court. Interim order is reasoned and speaking order based on set of facts available and on the strength of the correct interpretation of law. The Court is not inclined to accept the submission of ld. Counsel Mr. Dagli that the petitioner should be permitted to request the ld. trial Court to issue summons for calling any other conversant person with relevant documents because during the course of submissions,ld. counsel Mr. Dagli has positively stated and submitted that he made all best endeavour to persuade his client in this regard, but the present petitioner is not able to name any officer who can be called and examined vice Mr. Pai. It is strange as to how and why the director himself was the only witness available to the present petitioner in a case where an employee is facing prosecution under the provisions of Section 630 of the Companies Act. Ld. trial Judge has rightly observed in his order that insistence to have summons to be issued to a particular director i.e. Mr. Pai is with a view to delay the proceedings and non-examination of this witness is not likely to prejudice the defence side. In short, there is no merits in this Criminal Revision Application and deserves dismissal.

7. For the reasons aforesaid, this Criminal Revision Application is dismissed. Impugned order passed by ld. trial Judge in Criminal Case No. 11517/1997 below applications Exh.99 & 100 on 12.4.2001, is hereby

confirmed. Rule is discharged. This Court could have awarded costs to the respondents, but as the petitioner being an ex-employee, I am not inclined to award costs.
Yadi to the concerned court.

18.3.2002 [C.K. BUCH, J]
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